

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAMMY MORGAN,  
Petitioner,  
v.  
T. TUSINO, Warden,  
Respondent.

No. 2:20-cv-00605 TLN GGH P

ORDER

Petitioner is a federal prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner's habeas petition seeks to challenge his 2019 conviction in the United States District Court for the Eastern District of California for possession of a firearm by a felon. Petitioner has now filed a Notice of Erratum (ECF Nos. 8, 9), Motion for Issuance of Subpoena Duces Tecum (ECF Nos. 10, 11), Motion for Reconsideration of the undersigned's May 1, 2020 order (ECF No. 12), and Motion for Emergency Hearing on Petitioner's Habeas Petition (ECF No. 13).

*Motion for Reconsideration*

On April 1, 2020, the undersigned issued findings and recommendations recommending petitioner's habeas petition be dismissed as duplicative based on petitioner's pending habeas petition in Morgan v. Tusino, 2:20-cv-00603-CKF challenging the same 2019 conviction. ECF No. 5. Petitioner filed a motion to amend his habeas petition, however, the proposed amended

petition challenged the same 2019 conviction as his previous petition. Accordingly, on May 1, 2020, the undersigned denied petitioner's motion to amend. ECF No. 7. The undersigned further reminded petitioner he may file his motions or requests relating to his 2019 conviction in his pending habeas action in Morgan v. Tusino, 2:20-cv-00603-CKD. Id. Subsequently thereafter, petitioner filed the pending motion for reconsideration of the undersigned's May 1, 2020 order denying petitioner's motion to file an amended petition. ECF Nos. 12. In his motion for reconsideration, petitioner argues his motion to amend sought to address unintentional errors made in the original petition and requests the court apply less stringent pleading standards in reconsidering its denial. However, petitioner's attempts to amend his petition fail to address that petitioner seeks to pursue on a duplicate habeas action. Petitioner has failed to demonstrate any new or different facts or circumstances which did not exist or were not shown upon the prior motion. See E.D. Local Rule 230(j). Accordingly, the motion for reconsideration is denied.

*Motion for Issuance of Subpoena Duces Tecum*

Petitioner is also seeking issuance of subpoenas duces tecum for documents relating to his federal criminal case, including his plea agreement, presentence investigation report, "order in criminal sentence procedure," and the sentencing hearing transcript, ECF Nos. 10, 11. "The writ of habeas corpus is not a proceeding in the original criminal prosecution but an independent civil suit." Riddle v. Dyche, 262 U.S. 333, 335-336, 43 S.Ct. 555, 555, 67 L.Ed. 1009 (1923). "A habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course." Bracy v. Gramley, 520 U.S. 899, 904, 117 S. Ct. 1793, 1796-97, 138 L. Ed. 2d 97 (1997). Rule 6 of the Rules Governing § 2254 Cases provides discovery, at the court's discretion, and upon a showing of good cause. Id. However, here, discovery would not be appropriate given this action is a duplicative later-filed action. Petitioner is reminded that any motions are appropriately filed in his currently pending habeas case in Morgan v. Tusino, 2:20-cv-00603-CKD.

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*Motion for Emergency Hearing*

In addition, petitioner has filed a motion for an emergency hearing on his federal habeas petition. ECF No. 13. It appears petitioner is seeking an immediate evidentiary hearing on his habeas petition. However, because petitioner's action is being dismissed as duplicative, an emergency hearing on the habeas petition is not warranted in this action.

Accordingly, IT IS HEREBY ORDERED that:

1. Petitioner's motion for reconsideration of the undersigned's May 1, 2020 order (ECF No. 12) is denied;
2. Petitioner's motion for issuance of subpoena duces tecum (ECF No. 10) is denied; and
3. Petitioner's motion for emergency hearing (ECF No. 13) is denied.

Dated: June 10, 2020

/s/ Gregory G. Hollows  
UNITED STATES MAGISTRATE JUDGE